IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 5470 of 2006

LRS OF ANTHONI MENDEJA
V/S
BHAGWATI DEVI & ORS.

Mr. RANJEET SINGH KUMPAWAT, for the appellant / petitioner

Mr. RK THANVI, for the respondent

Date of Order : 9.8.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

By this petition, the petitioner seeks to challenge the two orders, Annex.2 and Annex.6. Annex.6 is the order dated 9.5.2006 dismissing the petitioner's application filed under Order 16 Rule 1(3). By this application, the petitioner wanted to summon the record of the Housing Board regarding delivery of possession of house No.15/265 to the plaintiff No.2, and other record, about telephone connection, electricity connection, water connection, voter list and the ration card.

Learned trial Court found that regarding some of the documents, the petitioner had filed application under Order 13 Rule 2, which has been dismissed by detailed order dated 9.5.2002. Then another application filed under Order 6 Rule 17 CPC was filed for summoning these documents, that was also dismissed, and it is not the duty of the Court to collect evidence for the parties. It was also found that in

para-4 of the plaint, the plaintiff has pleaded the suit premises to be required for plaintiff No.1 and 3, therefore, the application was not found to be having any merit, and was dismissed. Then vide order, Annex.2 dated 24.8.2006, the plaintiff filed an application for amendment of the issues, suggesting 11 issues to be framed, instead of existing 5 issues, being Annex.4. It has been found by learned trial Court that the issues have already been framed in accordance with the pleadings, about the material aspects, which are required to be decided, for determining the controversy between the parties, and therefore, the application was dismissed.

Assailing the order dated 24.8.2006 first, it was contended, that the existing issue No.2 comprehends the question about the requirement of the suit premises for all plaintiffs, while even according to the plaint averments, the requirement pleaded is for plaintiffs No.1 and 3 only. In that view of the matter, this issue was required to be amended, so as to comprehend the requirement of plaintiffs No.1 and 3 only. Learned counsel for the respondent-plaintiff did not oppose this submission.

Accordingly, the order Annex.2 is modified and the issue No.2 is amended to read as under:-

"आया वादीगण सं. 1 व 3 को विवादित परिसर की अपने एवम् अपने परिवार की रिहायस हेतु युक्तियुक्त एवम् सदभावनापूर्ण आवश्यकता है?
वादीगण"

No other submission was made to assail the order

Annex.2.

So far as the order Annex.6 is concerned, the documents sought to be produced, relate to the possession having been receiving by plaintiff No.2, and is having living there. In view of the pleadings contained in para-4 of the plaint, and the issue as has been framed today, those documents cannot be said to be relevant for the controversy involved in the suit. In that view of the matter, I do not find any justification to interfere in the order Annex.6.

Consequently, the writ petition is partly allowed to the extent of amending issue No.2. Rest of the writ is dismissed.

(N P GUPTA),J.

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